

DOCKET FILE COPY ORIGINAL **ORIGINAL**

BEFORE THE
Federal Communications Commission
WASHINGTON, DC 20554

RECEIVED

JUL - 6 1998

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Implementation of the Telecommunications Act)
of 1996) CC Docket No. 96-115
)
Telecommunications Carriers' Use of Customer)
Proprietary Network Information and Other)
Customer Information)

**PRIMECO PERSONAL COMMUNICATIONS, L.P.
REPLY TO COMMENTS AND OPPOSITIONS**

PrimeCo Personal Communications, L.P. ("PrimeCo"), hereby replies to comments on and oppositions to petitions for reconsideration of the *Second Report and Order* in the above-referenced proceeding.¹ The record in this proceeding overwhelmingly supports reconsideration of or, in the alternative, forbearance from enforcing Sections 64.2005(b)(1) and 64.2005(b)(3) of the Commission's rules as they apply to the provision of commercial mobile radio service ("CMRS"). In addition, petitioners and commenters have demonstrated that the record in this proceeding does not support imposing computerized "audit trail" and "flagging" safeguard requirements on competitive CMRS providers.

No. of Copies rec'd _____
List ABCDE _____

0411

¹ *Implementation of the Telecommunications Act of 1996: Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information*, CC Docket No. 96-115, *Second Report and Order and Further Notice of Proposed Rulemaking*, FCC 98-27 (rel. Feb. 26, 1998), 63 Fed. Reg. 20236 (Apr. 24, 1998).

I. THE RECORD SUPPORTS RECONSIDERATION OF OR FORBEARANCE FROM ENFORCING THE CPE/INFORMATION SERVICES AND “WINBACK” RESTRICTIONS ON CMRS PROVIDERS

PrimeCo has petitioned the Commission to reconsider or, in the alternative, forbear from enforcing Sections 64.2005(b)(1) and 64.2005(b)(3) on CMRS providers.² Commenting parties agree that reconsideration or forbearance from enforcing these requirements is appropriate.³ In addition, no commenting parties oppose reconsideration or forbearance for CMRS providers.

CPE and Information Services. The parties supporting reconsideration of these restrictions agree that CPE and information services are “related to” CMRS carriers’ existing offerings and that these services are included within customer expectations.⁴ The record further demonstrates that handsets are essential to call completion and therefore to a

² Petition for Limited Reconsideration and/or Forbearance of PrimeCo Personal Communications, L.P., CC Docket No. 96-115, filed May 26, 1998, at 2-10 (reconsideration) and 11-16 (forbearance) (“PrimeCo Petition”). While the Common Carrier Bureau subsequently released an *Order* to clarify aspects of the CPNI rules, *see Order*, CC Docket No. 96-115, DA 98-971 ¶¶ 2-7 (CCB rel. May 21, 1998), PrimeCo submits that Commission reconsideration of or forbearance from enforcing Sections 64.2005(b)(1) and (b)(3) is still needed.

³ *See, e.g.*, AirTouch Comments at 9-12 (forbearance); Arch Comments at 3-5 (reconsideration); AT&T Opposition/Comments at 3-9 (reconsideration); Bell Atlantic Mobile (“BAM”) Comments at 6-24 (forbearance); SBC Communications Comments at 2-5 (reconsideration for both landline and CMRS); U S WEST Comments at 2 n.2 (same); *see also* 360 Communications Petition at 4-9 (reconsideration or forbearance); CommNet Cellular Petition at 2, 4-10 (same); CTIA Petition at 1-7, 34-42 (same); Omnipoint Petition at 4-13 (reconsideration); Vanguard Petition at 9-12 (reconsideration). As noted, a number of carriers contend that these restrictions should be lifted for both CMRS and landline carriers. PrimeCo does not address this issue in its filings.

⁴ *See, e.g.*, Arch Comments at 3-4; AirTouch Comments at 10-11; AT&T Comments at 5-6; SBC Comments at 3; *see also* BellSouth Comments at 6; GTE Comments at 4-6; U S WEST Comments at 2.

CMRS provider's Title III radio service.⁵ Similarly, for information services, commenters agree with PrimeCo that consumers find voice mail to be essential to their service, in that it enables them to receive telecommunications when a handset is turned off; as a result, customers view voice mail as critical and integral to their CMRS service.⁶

The record demonstrates further that forbearance from enforcing Section 64.2005(b)(1) is required for CMRS providers. It is undisputed that there is intense competition between CMRS providers.⁷ Furthermore, commenters agree that forbearance is mandated under Section 10.⁸ Indeed, Bell Atlantic Mobile has provided additional compelling information regarding the detrimental impact of these rules on CMRS competition and consumers.⁹ The record in this proceeding clearly supports reconsideration or forbearance from enforcing Section 64.2005(b)(1).

Winback Restrictions. Commenting parties addressing the Section 64.2005(b)(3) winback restriction for CMRS providers also agree that the winback prohibition is not mandated by Section 222 and, in any event, is anticompetitive and anti-consumer.¹⁰

⁵ See, e.g., AT&T Comments at 6-7; BAM Comments at 22-23; Celpage Comments at 4-5; GTE Comments at 5; see also BellSouth Petition at 10-11; PageNet Petition at 5; Vanguard Petition at 9.

⁶ See, e.g., AT&T Comments at 7; Celpage Comments at 6-8.

⁷ See, e.g., AirTouch Comments at 10-11; Arch Comments at 2-3; BAM Comments at 7-8; Celpage Comments at 10.

⁸ See, e.g., AirTouch Comments at 9-12; MCI Comments at 25; SBC Comments at 4 n.14.

⁹ See BAM Comments at 14-20 (CPNI rules will have a detrimental impact on consumer choice, competition, and CMRS carrier costs and efficiencies), Exhibit 1, Declaration of Professor Jerry A. Hausman at 4-10.

¹⁰ See, e.g., Arch Comments at 4-5; BAM Comments at 15-18; see also AT&T Comments at 3-5 (supporting elimination of winback requirement for all carriers); GTE Comments (continued...)

Bell Atlantic Mobile also provided additional data concerning the adverse economic impact of this proposal for CMRS providers.¹¹ Many CLEC commenters assert in general terms that the Commission should retain the winback restriction.¹² Upon closer review, however, these commenters address the winback restrictions only in the ILEC-CLEC context, and do not address whether these restrictions should apply to competitive CMRS providers. The record also supports reconsideration of or forbearance from enforcing Section 64.2005(b)(3).

II. COMMENTERS HAVE DEMONSTRATED THAT THE RECORD DOES NOT SUPPORT IMPOSING COMPUTERIZED “FLAGGING” AND “AUDIT TRAIL” SAFEGUARDS ON COMPETITIVE CMRS PROVIDERS

Lastly, PrimeCo joins other petitioners and commenting parties in opposition to the computerized “flagging” and “audit trail” safeguards of Sections 64.2009(a) and (c).¹³ Petitioners and commenting parties have noted that implementing these requirements will be extremely costly; in addition, PrimeCo and other carriers are currently grappling with the Year 2000 problem, thus rendering implementation of the flagging and audit trail requirements even more difficult. Petitioners and commenters have demonstrated that interested parties were *not* put on notice that these requirements were under consideration for carriers — much less competitive CMRS carriers — and that these requirements have an insufficient

(...continued)

at 10 (same); SBC Comments at 20 (same); U S WEST Comments at 3, n.4 (same).

¹¹ See BAM Comments at 15-18, Exhibit 1 at 9-10.

¹² See, e.g., Allegiance Telecom Opposition at 2-13; Ass’n for Local Telecommunications Services Opposition at 1-4; Commonwealth Telecom Services Opposition at 2-13; KMC Telecom Opposition at 2-13.

¹³ See, e.g., AT&T Petition at 8-15; BellSouth Petition at 21; CompTel Petition at 21-23; LCI Petition at 16-18; MCI Petition at 37-38; Omnipoint Petition at 13-16; Sprint Petition at 3-4; AirTouch Comments at 3-9; Arch Comments at 5-7.

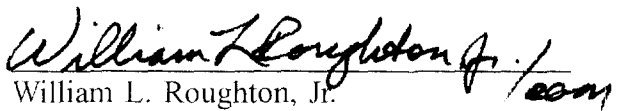
basis in the record.¹⁴ Given the overwhelming opposition to these burdensome requirements, and that other safeguards are sufficient to protect customers and meet Section 222 objectives, the Commission should eliminate these rules in their entirety.

CONCLUSION

For the reasons discussed herein and in PrimeCo's petition for reconsideration and/or forbearance, the record demonstrates that Commission should reconsider or, in the alternative, forbear from enforcing Sections 64.2005(b)(1) and (b)(3) for CMRS providers. Commenters and petitioners have also demonstrated that the computerized safeguards of Sections 64.2009(a) and (c) are not supported by the record and should be eliminated.

Respectfully submitted,

PRIMECO PERSONAL COMMUNICATIONS, L.P.

By: 
William L. Roughton, Jr.
Associate General Counsel

601 13th Street, N.W.
Suite 320 South
Washington, D.C. 20005
(202) 628-7735

Its Attorney

July 6, 1998

¹⁴ See, e.g., BellSouth Petition at 20, n.48, LCI Petition at 16-18; AirTouch Comments at 6-9; BellSouth Comments at 11; U S WEST Comments at 4-5, n.8. PrimeCo notes that at least two commenters take issue with the Commission's use of their *ex parte* presentations as a basis for these costly requirements. See AirTouch Comments at 8-9; Bell Atlantic Corporation Comments at 11-12; see also BellSouth Petition at 20.

CERTIFICATE OF SERVICE

I, Jo-Ann G. Monroe, hereby certify that I have on this 6th day of July, 1998 caused a copy of the foregoing Reply Comments of PrimeCo Personal Communications, L.P. to be served by first class U.S. mail, postage prepaid, to the following:

The Honorable William E. Kennard*
Federal Communications Commission
1919 M Street, N.W., Room 814
Washington, D.C. 20554

The Honorable Harold Furchtgott-Roth*
Federal Communications Commission
1919 M Street, N.W., Room 802
Washington, D.C. 20554

The Honorable Susan Ness*
Federal Communications Commission
1919 M Street, N.W., Room 832
Washington, D.C. 20554

The Honorable Michael Powell*
Federal Communications Commission
1919 M Street, N.W., Room 844
Washington, D.C. 20554

The Honorable Gloria Tristani*
Federal Communications Commission
1919 M Street, N.W., Room 826
Washington, D.C. 20554

Daniel Phythyon, Chief*
Wireless Telecommunications Bureau
Federal Communications Commission
2025 M Street, N.W., Room 5002
Washington, D.C. 20554

Rosalind K. Allen*
Wireless Telecommunications Bureau
Federal Communications Commission
2025 M Street, N.W., Room 7002
Washington, D.C. 20554

Jeanine Poltronieri*
Wireless Telecommunications Bureau
Federal Communications Commission
2025 M Street, N.W., Room 5002
Washington, D.C. 20554

A. Richard Metzger, Jr.*
Common Carrier Bureau
Federal Communications Commission
1919 M Street, N.W., Room 712
Washington, D.C. 20554

Janice M. Myles*
Common Carrier Bureau
Federal Communications Commission
1919 M Street, N.W., Room 544
Washington, D.C. 20554

Michael F. Altschul
Randall S. Coleman
Cellular Telecommunications Industry
Association
1250 Connecticut Avenue, N.W.
Washington, D.C. 20036

John F. Raposa
GTE Service Corp.
600 Hidden Ridge, HQE03J27
Irving, TX 75038

Gail L. Polivy
GTE Service Corp.
1850 M Street, N.W.
Washington, D.C. 20036

R. Michael Senkowski
Michael Yourshaw
Gregory J. Vogt
Wiley, Rein & Fielding
1776 K Street, N.W.
Washington, D.C. 20006

International Transcription Services*
1231 20th Street, N.W.
Washington, D.C. 20036

Leon M. Kestenbaum
Jay C. Keithley
Michael B. Fingerhut
Attorneys for Sprint Corporation
1850 M Street, N.W. 11th Floor
Washington, DC 20036

Frank W. Krogh
Mary L. Brown
MCI Telecommunications Corporation
1801 Pennsylvania Avenue, N.W.
Washington, D.C. 20006

S. Mark Tuller
Vice President, Secretary and General
Counsel
Bell Atlantic Mobile, Inc.
180 Washington Valley Road
Bedminster, NJ 07921

John T. Scott, III
Crowell & Moring LLP
1001 Pennsylvania Avenue, N.W.
Washington, D.C. 20004

Peter M. Connolly
Koteen & Naftalin
1150 Connecticut Avenue, N.W.
Washington, D.C. 20036

James J. Halpert
Mark J. O'Connor
Piper & Marbury LLP
1200 19th Street, N.W., 7th Floor
Washington, D.C. 20036

Robert Hoggarth
Senior Vice President, Paging and
Messaging
Personal Communications Industry
Association
500 Montgomery Street, Suite 700
Alexandria, VA 22314

Raymond G. Bender, Jr.
J.G. Harrington
Kelli Jareaux
Dow, Lohnes & Albertson, PLLC
Suite 800
1200 New Hampshire Avenue, N.W.
Washington, D.C. 20036

Cheryl A. Tritt
James A. Casey
Morrison & Foerster LLP
Suite 5500
2000 Pennsylvania Avenue, N.W.
Washington, D.C. 20006

Mary McDermott
Linda Kent
Keith Townsend
Lawrence E. Sarjeant
United States Telephone Association
1401 H Street, N.W., Suite 600
Washington, D.C. 20005

Kathryn Marie Krause
U S WEST Communications, Inc.
Suite 700
1020 - 19th Street, N.W.
Washington, D.C. 20036

Mark C. Rosenblum
Judy Sello
AT&T Corp.
Room 324511
295 North Maple Avenue
Basking Ridge, NJ 07920

Michael S. Pabian
Counsel for Ameritech
Room 4H82
2000 West Ameritech Center Drive
Hoffman Estates, IL 60196

John F. Raposa
GTE Service Corporation
600 Hidden Ridge, HQE03J27
Irving, TX 75038

Gail L. Polivy
GTE Service Corporation
1850 M Street, N.W.
Washington, D.C. 20036

Stephen G. Kraskin
Sylvia Less
March E. Greenstein
Kraskin, Lesse & Cosson, LLP
2120 L Street, N.W., Suite 520
Washington, D.C. 20037

Lawrence W. Katz
Attorney for the Bell Atlantic Telephone
Companies
Eight Floor
1320 North Court House Road
Arlington, VA 22201

Genevieve Morelli
Executive Vice Pres. and General Counsel
Competitive Telecommunications Ass'n
1900 M Street, N.W., Suite 800
Washington, DC 20036

M. Robert Sutherland
A. Kirven Gilvert III
BellSouth Corporation
Suite 1700
1155 Peachtree Street, N.E.
Atlanta, GA 30309

L. Marie Guillory
Jill Canfield
National Telephone Cooperative Association
2626 Pennsylvania Avenue, N.W.
Washington, D.C. 20037

Robert M. Lynch
Durward D. Dupre
Michael J. Zpevak
Robert J. Gryzmala
SBC Communications Inc.
One Bell Center, Room 3532
St. Louis, MO 63101

Robert J. Aamoth
Steven A. Augustino
Kelley Drye & Warren LLP
1200 19th Street, N.W. Suite 500
Washington, DC 20036

Douglas W. Kinkpoh
J. Scott Nicholls
LCI International Telecom Corp.
8180 Greensboro Dr., Suite 800
McLean, VA 22102

Brad E. Mutschelknaus
Steven A. Augustino
Kelley Drye & Warren LLP
1200 19th Street, N.W., Suite 500
Washington, DC 20036

Kawrence W. Katz
Attorney for the Bell Atlantic Companies
1320 N. Court House Rd.
8th Floor
Arlington, VA 22201

Benjamin H. Dickens, Jr.
Gerard J. Duffy
Susan J. Bahr
Attorneys for CommNet Cellular, Inc.
Blooston, Mordkofsky, Jackson & Dickens
Suite 300, 2120 L Street, NW
Washington, DC 20037

Paul H. Kuzia
Executive Vice President
Technology and Regulatory Affairs
Arch Communications Group, Inc.
1800 West Park drive, Suite 250
Westborough, MA 01581-3912

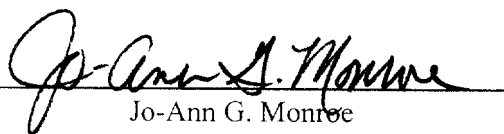
Richard J. Metzger
Vice President & General Counsel
Association for Local Telecommunications
Services
888 17th Street, N.W., Suite 900
Washington, D.C. 20006

Pamela J. Riley
David A. Gross
AirTouch Communications, Inc.
1818 N Street, N.W., Suite 800
Washington, D.C. 20036

Dana Frix
Raymond J. Kimball
Swidler & Berlin, Chartered
3000 K Street, N.W., Suite 300
Washington, D.C. 20007

Robert W. McCausland
Vice President, Regulatory and Interconnection
Allegiance Telecom, Inc.
1950 Stemmons Freeway, Suite 3026
Dallas, TX 75207-3118

Frederick M. Joyce
Christine McLaughlin
Joyce & Jacobs
Fourteenth Floor — PH2
1019 19th Street, N.W.
Washington, D.C. 20036



Jo-Ann G. Monroe

*By Hand